THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23318 OF 2006

ORAL ORDER:

Heard the learned Counsel for the petitioner and the learned Government Pleader for Prohibition & Excise appearing for the respondents.

This writ petition is filed aggrieved by the action of the respondents in collecting the licence fee for unlicenced period i.e., from 1.7.2005 to 1.8.2005, in spite of the fact that Form 2(B) licence for establishing a Bar under the provisions of A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Rules') was granted in the middle of the excise year.

The question whether the licensee who is granted licence for the privilege of selling by Bar under the above Rules after the commencement of the licence period of 12 months is entitled to pay the proportionate licence fees or is he liable to pay the annual licence fee for the entire period of 12 months has been considered by this Court in detail in W.P.No.23415 of 2005 and the same was allowed by order dated 25-4-2006 holding that the word "annual licence fees" employed in Rule 10, if read in the light of the definition of licence fees under Rule 3 (k) read with Rule 3 (o), it is clear that it includes proportionate licence fee. Accordingly, it was declared that the petitioner therein who is accorded sanction for grant of Form–2(B) licence in the middle of the excise year, is liable to pay only proportionate Licence Fee with reference to the actual period of licence. The said order was confirmed by a Division Bench of this Court in W.A.No.686 of 2006 by Judgment dated 19-6-2006 holding as under:

> *"The incorporation of specific definition of the expression "Proportionate Licence Fee" in the 2005 Rules is clearly indicative of the intention of the rule making authority to charge Licence Fee only for the period during which the licensee can avail the benefit of licence. If the licence is*

granted for the entire licence period commencing from 1st July of the year, then he is bound to pay annual licence fee for the entire period of 12 months irrespective of the period of doing business. However, if the licence is granted for a shorter period, then the licensee is required to pay "Proportionate Licence Fee" only for that part of the licence period. If the Rule making authority had intended that every licensee shall, irrespective of the period of licence, pay annual licence fee for the whole of the year, then there was no occasion for the said authority to incorporate the definition of the expression 'Proportionate Licence Fee' or provide for grant of licence for a shorter period."

Learned Counsel for the petitioner as well as the learned Government Pleader submitted that the issue involved in this writ petition is squarely covered by the ratio laid down in the above decision.

Accordingly, the writ petition is disposed of granting liberty to the petitioner to make an appropriate application seeking refund of the excess licence fee, if any, collected from the petitioner. If any such application is made, the same shall be considered and appropriate orders be passed in accordance with law within a period of four weeks from the date of receipt of a copy of this order. No costs.

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(G. ROHINI, J.)

10th November, 2006.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23318 OF 2006

10th November, 2006.

Between:

M/s Shivaji Restaurant & Bar & Restaurant,
H.No.1-7-39/1, Jagadamba Centre,

Yellandu, Khammam district,
represented by its licencee- Mr. P. Prasad. .. Petitioner.

And

The Commissioner of Prohibition and Excise,
Government of A.P., at Nampally, Hyderabad and
another. .. Respondents.

This writ petition is filed seeking a declaration that the action of the

respondents in collecting the licence fee for the period from 1.7.2005 to 1.8.2005 as arbitrary and illegal.

It is contended by the petitioner that during the period from 1.7.2005 to 1.8.2005, the petitioner was not holding a licence under the provisions of the Andhra Pradesh Excise (Grant of License of Selling by Bar and conditions of Licence) Rules, 2005 and that therefore, it is not liable to pay the licence fee, and in spite of request made by the petitioner to refund the proportionate licence fee for the said period, the respondents failed to consider the same.

Having heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition & Excise appearing for the respondents and having regard to the ratio laid down in W.P.No.23415 of 2005, as confirmed by the Division Bench in W.A.No.686 of 2006, the writ petition is disposed of granting liberty to the petitioner to make appropriate application seeking refund of the amount for the period in question. If any such application is made, the same shall be considered and appropriate orders be passed in accordance with law within a period of four weeks from the date of receipt of a copy of this order. No costs.